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Industries Ltd. and Teva Pharmaceuticals USA, Inc.*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

TEVA PHARMACEUTICAL INDUSTRIES)
LTD. and TEVA PHARMACEUTICALS)
USA, INC.,)

Plaintiffs,)

v.)

APOTEX, INC. and APOTEX CORP.,)

Defendants.)

Civil Action No. 3:07-cv-05514-GEB-JJH

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**TEVA PHARMACEUTICAL INDUSTRIES LTD. AND
TEVA PHARMACEUTICALS USA, INC.’S ANSWER TO
APOTEX, INC.’S AND APOTEX CORP.’S AMENDED COUNTERCLAIMS**

To answer the amended counterclaims of Apotex, Inc. and Apotex Corp. (collectively, “Apotex” or “Defendants”), Paragraphs 47-119 of Apotex’s Amended Answer, Affirmative

Defenses and Counterclaims filed February 21, 2008 (“Counterclaims”), and subject to a motion to dismiss ruled upon by the Court pursuant to its Order dated August 7, 2008, Plaintiffs Teva Pharmaceutical Industries Ltd. (“Teva Ltd.”) and Teva Pharmaceuticals USA, Inc. (“Teva USA;” collectively, “Teva” or “Plaintiffs”) respond as follows:

JURISDICTION AND VENUE

47. Plaintiffs admit that Defendants’ purported counterclaims are in the nature of a declaratory judgment action brought pursuant to 28 U.S.C. §§ 2201, *et seq.*, pursuant to the patent laws of the United States, 35 U.S.C. § 1, *et seq.* Plaintiffs deny the remaining allegations of Paragraph 47 of the Counterclaims.

48. Plaintiffs admit that this Court has subject matter jurisdiction over this action. The remaining allegations in Paragraph 48 of the Counterclaims state legal conclusions which require no response and are denied to the extent they require a response.

49. Plaintiff Teva Pharmaceuticals USA, Inc. admits the allegations in Paragraph 49 as to Teva Pharmaceuticals USA, Inc. Plaintiff Teva Pharmaceutical Industries Ltd. admits that it is a Plaintiff in this action and states that it will not contest personal jurisdiction in this action. Plaintiffs Teva Pharmaceuticals USA, Inc. and Teva Pharmaceutical Industries Ltd. admit that venue in this Court is proper. Plaintiffs deny the remaining allegations of Paragraph 49 of the Counterclaims.

FIRST COUNTERCLAIM – DECLARATION OF INVALIDITY

50. Plaintiffs repeat and incorporate the responses to Paragraphs 47-49 of the Counterclaims as if fully set forth herein.

51. Plaintiffs deny the allegations in Paragraph 51 of the Counterclaims.

SECOND COUNTERCLAIM – DECLARATION OF INVALIDITY

52. Plaintiffs repeat and incorporate the responses to Paragraphs 47-51 of the Counterclaims as if fully set forth herein.

53. Plaintiffs deny the allegations in Paragraph 53 of the Counterclaims.

THIRD COUNTERCLAIM – DECLARATION OF INVALIDITY

54. Plaintiffs repeat and incorporate the responses to Paragraphs 47-53 of the Counterclaims as if fully set forth herein.

55. Plaintiffs deny the allegations in Paragraph 55 of the Counterclaims.

FOURTH COUNTERCLAIM – DECLARATION OF INVALIDITY

56. Plaintiffs repeat and incorporate the responses to Paragraphs 47-55 of the Counterclaims as if fully set forth herein.

57. Plaintiffs deny the allegations in Paragraph 57 of the Counterclaims.

FIFTH COUNTERCLAIM – DECLARATION OF NONINFRINGEMENT

58. Plaintiffs repeat and incorporate the responses to Paragraphs 47-57 of the Counterclaims as if fully set forth herein.

59. Plaintiffs deny the allegations in Paragraph 59 of the Counterclaims.

SIXTH COUNTERCLAIM – DECLARATION OF NONINFRINGEMENT

60. Plaintiffs repeat and incorporate the responses to Paragraphs 47-59 of the Counterclaims as if fully set forth herein.

61. Plaintiffs deny the allegations in Paragraph 61 of the Counterclaims.

SEVENTH COUNTERCLAIM – DECLARATION OF NONINFRINGEMENT

62. Plaintiffs repeat and incorporate the responses to Paragraphs 47-61 of the Counterclaims as if fully set forth herein.

63. Plaintiffs deny the allegations in Paragraph 63 of the Counterclaims.

EIGHTH COUNTERCLAIM – DECLARATION OF NONINFRINGEMENT

64. Plaintiffs repeat and incorporate the responses to Paragraphs 47-63 of the Counterclaims as if fully set forth herein.

65. Plaintiffs deny the allegations in Paragraph 65 of the Counterclaims.

NINTH COUNTERCLAIM – DECLARATION OF UNENFORCEABILITY

Defendants' Ninth Counterclaim, Paragraphs 66-75, was dismissed by the Court in the Order of August 7, 2008, and therefore requires no response. To the extent some response to these allegations should be deemed required, Teva denies them.

TENTH COUNTERCLAIM – DECLARATION OF UNENFORCEABILITY

76. Plaintiffs repeat and incorporate the responses to Paragraphs 47-75 of the Counterclaims as if fully set forth herein.

77. Plaintiffs admit that they did not disclose international patent application WO 02/00216 during the prosecution of the application for U.S. Patent No. 6,710,184. Plaintiffs deny the remaining allegations of Paragraph 77 of the Counterclaims.

78. Plaintiffs admit that, on its face, international patent application WO 02/00216 states that it was published on January 3, 2002. Plaintiffs further admit that the filing date for U.S. Patent No. 6,710,184 is January 15, 2003. Plaintiffs deny the remaining allegations of Paragraph 78 of the Counterclaims.

79. Plaintiffs admit that they own international patent application WO 02/00216.

80. WO 02/00216 speaks for itself. Plaintiffs deny the remaining allegations of Paragraph 80 of the Counterclaims.

81. Plaintiffs admit that they own WO 02/00216. Plaintiffs further admit that they were aware of WO 02/00216. Plaintiffs deny the remaining allegations in Paragraph 81 of the Counterclaims.

82. Plaintiffs deny the allegations in Paragraph 82 of the Counterclaims.

**ELEVENTH COUNTERCLAIM – VIOLATION OF SHERMAN ACT,
15 U.S.C. § 2 – MONOPOLIZATION AND ATTEMPTED MONOPOLIZATION**

Defendants' Eleventh Counterclaim, Paragraphs 83-111, was dismissed by the Court in the Order of August 7, 2008, and therefore requires no response. To the extent some response to these allegations should be deemed required, Teva denies them.

TWELFTH COUNTERCLAIM – UNFAIR COMPETITION

112. Plaintiffs repeat and incorporate the responses to Paragraphs 47-111 of the Counterclaims as if fully set forth herein.

113. Plaintiffs deny the allegations in Paragraph 113 of the Counterclaims.

114. Paragraph 114 of the Counterclaims contains legal conclusions and therefore requires no response. To the extent a response is required, Plaintiffs deny the allegations in Paragraph 114 of the Counterclaims.

**THIRTEENTH COUNTERCLAIM – TORTIOUS INTERFERENCE WITH
PROSPECTIVE ECONOMIC ADVANTAGE**

115. Plaintiffs repeat and incorporate the responses to Paragraphs 47-114 of the Counterclaims as if fully set forth herein.

116. Plaintiffs lack knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 116 of the Counterclaims, and therefore, deny them.

117. Plaintiffs deny the allegations of Paragraph 117 of the Counterclaims.

118. Plaintiffs deny the allegations of Paragraph 118 of the Counterclaims.

119. Paragraph 119 of the Counterclaims contains legal conclusions and therefore requires no response. To the extent a response is required, Plaintiffs deny the allegations in Paragraph 119 of the Counterclaims.

DEMAND FOR JUDGMENT

Plaintiffs deny that Defendants are entitled to any of the relief sought in Paragraphs A-H. Plaintiffs request that the Court enter a judgment in Plaintiffs' favor and grant the relief set forth in Plaintiffs' Amended Complaint for Patent Infringement.

Dated: August 25, 2008

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